IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 1265 OF 1985

Bank of Maharashtra .. Plaintiffs.

vs.

Prasad Brush Co.

& Ors. .. Defendants.

Mr. P. Thatte i/by S.V. Phadke & Co.

for plaintiffs.

None for the defendants.

CORAM : S.U.KAMDAR, J.

DATE : 6th July, 2005.

P.C.

. The present suit has been filed for recovery of a sum of Rs. 56,972.80 as prayed in the particulars of claim Exhibit "G" to the plaint. It is the case of the plaintiffs that the plaintiffs advanced to the defendants the loan facility of Rs. 62,800/- and in support of the said loan facility the defendant no. 2 has executed various documents being letter of proprietorship, agreement of hypothecation of goods. The said amount of loan was

disbursed to the defendant and the defendant was bound and liable to repay the said amount with interest thereon at the rate of 6% per annum over and above the Reserve Bank of India rate at the rate of 15% per annum with quarterly rests. It is the case of the plaintiffs that the said amount was not paid on its due date. According to the plaintiffs, on 12.3.1982 at the foot of the account there was outstanding of a sum of Rs.51,697/- exclusive of interest. The said amount was confirmed by the defendants by their confirmation letter dated 31.5.1979. In view of the fact that after making certain payments, the defendants did not make the necessary payment, the plaintiffs issued a letter dated 9.3.1985 calling upon the defendants to make the aforesaid payment. At the foot of the account there was an outstanding amount of Rs. 26,631/- and interest for the period of 1981-85 was Rs.30,341.80 totalling to Rs. 56,972.80.

2. Written Statement has been filed by the defendants and the only defence raised is that they have signed the documents in blank and thus they are not liable to make the payment.

3. The issues were framed. The issues in the present case are as under :-

1. Whether the Plaintiffs prove that the Plaintiffs Claim set out in the Particulars of Claim being Exhibit "G" to the Plaint is correct and proper?

2. Whether the Defendant Nos. 1, 2 and 3 prove that the Suit is barred by law of limitation?

3. Whether the Defendant nos. 1, 2 and 3 prove that this Court has no pecuniary jurisdiction to try and entertain the Suit?

4. Whether the Defendants prove that the Plaintiffs Bank took signatures of the defendants on printed documents without filling in the blanks?

5. Whether the Defendants prove that Letter of Confirmation/acknowlegements being Exhibits "C" "D" and "E" to the Plaint were not duly executed by the respective Defendants ?

6. Whether the Plaintiffs prove that the Plaintiffs are entitled to the Decree together with interest against the Defendants as prayed in the Plaint with costs ?

7. What Order ?

8. What Decree?

4. Against Defendant No. 4 there is an ex-parte decree already passed.

5. The learned counsel appearing for the plaintiffs tendered a compilation of documents dated 15.6.2005. On perusal of the statement of accounts which is annexed to the compilation of documents, I found variance and discrepancies in the statement of accounts which was filed along with the plaint. Accordingly, I directed the plaintiffs to give explanation for the same. The plaintiffs have filed an additional affidavit dated 4.7.2005 giving explanation about the discrepancies and produced the correct records of the said statement of account. The plaintiffs have also produced the original ledger for my perusal to satisfy me that the amount claimed in the suit is correct and proper. I have also perused the original of the said leger account. I am satisfied with the explanation furnished by the plaintiffs.

6. In the aforesaid circumstances, the said

documents filed on 15.6.2005 are marked Exhibit P-1 collectively. I also marked the additional affidavit of the plaintiff dated 4.7.2005 as Exhibit P-2 collectively.

7. The learned advocate for the plaintiff has filed an affidavit of evidence of one Mr. Ramchandra V. Ketkar who is the Senior Manager of the plaintiff Bank. The defendant has not remained present in spite of various adjournments in the matter.

8. In view of the aforesaid, the evidence of the plaintiff has gone unchallenged. In view thereof, I pass the following decree :-

> There shall be a decree in favour of the plaintiffs and against the defendants in the sum of Rs. 56,972.80 with further simple interest at the rate of 9% per annum till payment and/or realisation.

9. Suit decreed accordingly. No order as to costs.